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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,293	08/02/2001	Rudolf Ehrmaier	951/50202	3899

7590 04/09/2003
CROWELL & MORING, L.L.P.
P.O. Box 14300
Washington, DC 20044-4300

EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,293

Applicant(s)

EHRMAIER ET AL

Examiner

Melody M. Burch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to because the figure appears to incorporate two embodiments into one figure - a first embodiment including a key button and a second embodiment including a holding shaft . A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "18" has been used to designate both "wireless code transmission" as mentioned on pg. 6, "holding shaft" as mentioned on pg. 7, and "card insert" as shown in the figure. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the switch that is "indirectly manually actuated when the authorization verification device is inserted in the holding shaft 18" as described in the specification at the bottom of pg. 6 and the top of pg. 7. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the electronic authorization verification device claimed in line 2 of claim 3 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claims 1 and 8. The phrase "startable without a mechanical key" as first claimed in lines 2-3 of claim 1 is indefinite. It is unclear how the vehicle is startable without a mechanical key in the embodiment including the card 19 since in the last four lines of paragraph [0012] it is stated that inserting the card or "key" into the holding shaft

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corresponds to leaving a key in the ignition which, as disclosed on pg. 6 lines 1-2, results in the parking brake being not engaged, enabling movement or starting of the vehicle and since the card inserted in the card insert is, in essence, a mechanical key that houses electronic information.

Re: claim 1. The phrase "the parking brake" in line 5 lacks proper antecedent basis in the claim.

Re: claims 5 and 6. The phrase "said at least one operating parameter" in lines 1-2 lacks proper antecedent basis in the claim. Claim 1 recites "at least one specified operating parameter".

Claims 2-4, 7, 9, and 10 are indefinite due to their dependency from claims 1 and 8.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by the prior art admissions on pg. 2 of the instant application.

Re: claims 1 and 8. The prior art discloses an automatically activated parking brake system for a motor vehicle startable without a mechanical key as disclosed in lines 5-6 of paragraph [0005] of the instant application the system comprising an electronic control unit for automatically activating the parking brake in dependence on at

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least one specified operating parameter of the motor vehicle as disclosed in lines 6-9 of paragraph [0005], and means for arbitrarily preventing the electronic control unit from automatically activating the parking brake means including closing a driver's door or occupying a driver's seat as inferred by the disclosure in lines 11-12 of paragraph [0005], the means being operatively coupled with the electronic control unit as disclosed in lines 6-12 of paragraph [0005].

Re: claims 2 and 9. The admitted prior art discloses the limitation wherein the means for arbitrarily preventing the automatic activation of the parking brake comprises a key button in the form of an OFF switch disclosed in line 12 of paragraph [0005] coupled with the electronic control unit, the key button being directly manually actuatable via the driver, as inferred by the disclosure in lines 11-12 of paragraph [0005] as set forth in the paragraph above, to arbitrarily prevent the automatic activation of the parking brake by the electronic control unit.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3, 4, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of DE-19801064.

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The admitted prior art discloses in lines 2-3 the use of an electronic authorization verification device, but does not include the limitation of the device having a wireless code transmission.

DE-19801064 teaches in the abstract the use of an electronic authorization verification device having a wireless code transmission. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the electronic authorization verification device of the admitted prior art to have included a wireless code transmission, as taught by DE-19801064, in order to provide a means of facilitating the establishment of the access and driving authorization.

The admitted prior art also discloses the interaction of the vehicle user with door or seat sensors/switches as a means of triggering the vehicle condition of arbitrarily preventing the automatic application of the parking brake, but does not describe the limitation of the use of a card being inserted in to a holding shaft to achieve such start-up vehicle condition.

DE-19801064 teaches the use of an electronic authorization verification device 9 operatively arranged in the motor vehicle and being inserted into a holding shaft 2 for triggering arbitrarily a vehicle operating condition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the means of arbitrarily preventing automatic application of the parking brake of the admitted prior art, as modified, to have included the insertion of an authorization verification device into a holding shaft, in view of the teachings of DE-19801064, in order to provide an alternate and well-known user-interactive means of triggering a particular vehicle

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operating condition which includes the prevention of the automatic application of parking brakes.

12. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of WO 00/37836.

The admitted prior art teaches the invention substantially as set forth above, but does not include the limitation of the at least one operating parameter being a shutting-off of an internal combustion engine of the motor vehicle.

WO 00/37836 teaches in lines 13-14 of the abstract the use of automatically activating the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one specified operating parameter of the admitted prior art to have included the shutting off of an internal combustion engine, as taught by WO 00/37836, in order to provide an alternate means of automatically applying the brakes under emergency conditions or as an alternate means of safeguarding against operator forgetfulness.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of DE-19801064 as applied to claim 3 above, and further in view of WO 00/37836.

The admitted prior art, as modified, teaches the invention substantially as set forth above, but does not include the limitation of the at least one operating parameter being a shutting-off of an internal combustion engine of the motor vehicle.

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WO 00/37836 teaches in lines 13-14 of the abstract the use of automatically activating the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one specified operating parameter of the admitted prior art, as modified, to have included the shutting off of an internal combustion engine, as taught by WO 00/37836, in order to provide an alternate means of automatically applying the brakes under emergency conditions or as an alternate means of safeguarding against operator forgetfulness.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 09/920294. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because claims 1 and 5 of the instant application and claim 1 of the copending application claim an electronic control unit for automatically activation a parking brake of a vehicle startable without a mechanical key and means for arbitrarily preventing the automatic activation of the parking brake with the activation of the parking brake being in dependence on at least one specified operating parameter particularly being the shutting-off of an internal combustion engine. Claims 2 and 9 of the instant application and claim 3 of the copending application claim the key button in the form of an OFF switch. Claims 3, 4 and 10 of the instant application and claim 4 of the copending application claim the electronic authorization verification device.

Claim 8 of the instant application is obvious over claim 6 of the copending application in view of WO 00/37836. WO 00/37836 teaches in lines 13-14 of the abstract the use of automatically engaging the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the operating parameter to have been the shutting off of an internal combustion engine, as taught by WO 00/37836, in order to provide a means of determining an appropriate time to apply the brakes to permit safe deceleration of the vehicle.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents: 4691801 to Mann et al. teaches the use of a vehicle being startable without a mechanical key "hot wire", 6213259 to Hanson et al. teaches the use of keyless activation in an electrically powered parking brake device, 3593815 to Inoue, 5067366 to Gandiglio, 6279692 to Siepker et al., 6119837 to Tschurbanoff et al., 4561527 to Nakamoto et al., and DE-3909907 teach the use of automatically activated parking brakes, 3985210 to Hodge et al. and 3978946 to Ream teach the use of automatically activated parking brakes that are activated when the engine shuts off.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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mmb

April 1, 2003

M. C. Graham
4/3/2003

MATTHEW C. GRAHAM
PRIMARY EXAMINER
GROUP 310